

JEFF CO.

IBLA 82-91

Decided December 31, 1981

Appeal from the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M 49882.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications:
Drawings--Oil and Gas Leases: First Qualified Applicant

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first qualified applicant, one who has fully complied with all the regulations.

2. Regulations: Generally

Persons dealing with the Government are presumed to have knowledge of pertinent rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: William B. Collister, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Jeff Company appeals from a decision dated October 7, 1981, by the Montana State Office, Bureau of Land Management (BLM), rejecting application M 49882, submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing.

Appellant's application obtained first priority for parcel MT 9 in the January 1981 drawing. BLM rejected the application for failure to submit a complete list of corporate officers as required by 43 CFR 3102.2-5(a)(3). The decision stated:

Your application is rejected as required by regulation 43 CFR 3112.6-1(b) for failure to submit a complete list of corporate officers in accordance with CFR 3102.2-5(a)(3).

Regulations effective June 16, 1980, require that a corporation furnish a complete list of corporate officers, corporate qualifications are considered incomplete until the required list is received. Also, regulation 43 CFR 3102.2-1(c) states "Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current."

Your application identified Colorado 27930 as the serial reference number where your qualifications were previously filed. The close of the filing period for the January drawing was January 22, 1981, and according to information received from the Colorado State Office corporate qualifications for Jeff Company were not complete until February 12, 1981. A noncompetitive oil and gas lease may only be issued to the first qualified applicant. When your application was filed, it did not comport with the regulations and was, therefore, defective.

In the statement of reasons appellant concedes that it filed its list of corporate officers on February 12, 1981. Appellant asserts that it was previously qualified under 43 CFR 3102.4-1, 1/ in effect prior to June 16, 1980, and that it never received notice from BLM that a list of corporate officers was required under the amendments effective June 16, 1980. Appellant cites Trans-Texas Energy, Inc., 56 IBLA 295 (1981), observing that in that case BLM notified the applicant of the requirement for filing a list of corporate officers. Appellant

1/ This regulation required the filing of various corporate information but did not require a list of corporate officers.

suggests that its application should be considered because it complied voluntarily within a reasonable time after the close of the filing period.

[1] Trans-Texas Energy, Inc., *supra*, cited by appellant, involved an over-the-counter, noncompetitive, oil and gas filing. Where such a filing has a "curable" defect, priority may be established as of the date the defect is remedied. A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing, however, is not curable by submission of required evidence of qualifications after the drawing for the reason that the rights of the second and third qualified applicants have intervened. Stephen A. Pitt, 57 IBLA 365 (1981); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1947), *aff'd*, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1978). The Department is authorized to accept only the offer of the first qualified applicant, one who has fully complied with all mandatory regulations. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978); Harry A. Zuckerman, 41 IBLA 372 (1979).

In Trans-Texas Energy, Inc., *supra*, an appellant filed several over-the-counter offers during a simultaneous filing period from June 16 through June 23, 1980. Effective June 16, 1980, the corporate qualifications required to be filed were changed in 43 CFR 3102.2-5(a)(3) (45 FR 35162 (May 23, 1980)). On July 10, 1980, BLM advised the appellant to submit certain information required by the amendment of May 23, 1980. The appellant submitted the information August 22, 1980, but prior to August 22, 1980, an intervening offer was filed and completed. Trans Texas Energy, Inc., held that the intervening offeror received the lease and that BLM properly canceled the lease offer of the appellant in that case. As stated above, under the simultaneous drawing procedure of 43 CFR Subpart 3112 rights vest at the time of the drawing. Thus, even if appellant had notice of the defect in his filing of corporate qualifications, he could not, as in Trans-Texas Energy, Inc., file to correct the defect after the drawing had taken place. This is because the rights of the second qualified applicant had intervened. In Trans-Texas Energy, Inc., the offeror had time to correct the defect but failed to do so before another offeror perfected his offer and prevailed.

[2] Appellant's statement of reasons suggests that it should have been notified of the requirement for filing a list of corporate officers. The regulation involved was published in the Federal Register at 45 FR 35162 (May 23, 1980), with an effective date of June 16, 1980. Matters duly published in the Federal Register generally constitute constructive notice to all the world of what is therein set forth. 44 U.S.C. § 1507 (1976); Winston Bros. v. United States, 458 F.2d 49, 198 Ct. Cl. 37 (1972); United States v. Millsap, 208 F. Supp. 511

(D. Wyo. 1962); Lynsky v. United States, 126 F. Supp. 453, 130 Ct. Cl. 149 (1954). In any event, as a person dealing with the Government, appellant is presumed to have knowledge of pertinent rules and regulations, regardless of the absence of actual knowledge of what is contained in such regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

